

Exhibit AA

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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA

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4 v. 05 Cr. 621 (KMK)

4

5 ALBERTO VILAR Hearing

5

5 GARY TANAKA,

6

6 Defendant.

6 -----x

7

7 New York, N.Y.

7

7 August 8, 2006

8

8 11:30 a.m.

8

8 Before:

9

9 KENNETH M. KARAS

9

9 District Judge

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6886tan1

C. Fraterrigo - cross

- 1 A. Yes.
- 2 Q. That is the distinction between the two documents, correct?
- 3 A. Also, there was no space between five and a million.
- 4 Q. Say that one more time.
- 5 A. On page 1, there was a space between -- an added space
- 6 between five and million.
- 7 Q. I see. You made this change approximately two weeks later?
- 8 A. I am -- within two weeks. I don't know when.
- 9 Q. Do you see at the top of WW there is a fax line and a date?
- 10 A. Yes.
- 11 Q. At the top of XX there is a fax line and a date?
- 12 A. Yes.
- 13 Q. Does that refresh your recollection as to when you might
- 14 have made the changes to the documents?
- 15 A. No.
- 16 Q. Although you are saying it is within two weeks, it is fair
- 17 to say they were not actually created on the same day?
- 18 A. These two documents?
- 19 Q. Yes.
- 20 A. No. I don't think so.
- 21 Q. Do you see that on XX which is 3501-E that document is
- 22 signed by you, correct?
- 23 A. Yes.
- 24 Q. Can you see the date that you put next to your name?
- 25 A. Yes.

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1 Q. It says May 28?

2 A. Yes.

3 Q. That wasn't the date that you actually signed this
4 document, was it?

5 A. No. This is part of the form and I had just signed it.

6 Q. Well, this document was a form document?

7 A. It is a template in our system. So when I had this -- this
8 one was a draft. The first one was a draft. I signed it and
9 then when I realized that I had from my notes on this second
10 one, I didn't add that statement, so I added that statement and
11 I just signed it. I didn't change the date.

12 Q. On other memoranda of interview when you have a draft
13 document, you have actually indicated on it "draft," haven't
14 you?

15 A. Not particularly. Sometimes I don't sign it if it is a
16 draft.

17 Q. Is it fair to say whatever is on this 3501, which is the
18 final version, it says May 28, 2005, and that date is wrong?

19 A. That date is wrong, that's correct.

20 Q. And while you are using a template, it is also true that
21 you had the ability to change the template to actually put the
22 correct date, isn't that right?

23 A. Yes.

24 Q. But the way the final version appears, it appears that you
25 actually wrote this report up just two days after the date of

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1 interview, isn't that right?

2 A. Yes.

3 Q. That is not the case, isn't that correct?

4 A. No. Not on the second draft.

5 Q. So you spent 45 minutes in Mr. Tanaka's room?

6 MS. McEVOY: Objection. Mischaracterizes the witness'
7 testimony.

8 THE COURT: Really? That is what I thought she said.

9 MS. McEVOY: She said "approximately."

10 THE COURT: Okay.

11 MR. KOBRE: Noted.

12 Q. You spent approximately 45 minutes in Mr. Tanaka's room, is
13 that right?

14 A. Yes.

15 Q. Then what did you do immediately after leaving Mr. Tanaka's
16 room?

17 A. We brought him back to our office at 90 Church Street to
18 process him after he was in the back. We brought him to the
19 back of our offices. Curtis Roinestad, the postal inspector,
20 handle all the processing and I was in my office trying to take
21 care of other matters.

22 Q. Matters relating to this case?

23 A. Yes.

24 Q. Approximately how long did it take you from the time you
25 left the hotel room to the time that you left the location, the

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1 Q. Well, if I may just as far as who was there, say, just so I
2 understand, you're saying that you believe that as to who was
3 there is not accurately described in this MLAT; is that your
4 understanding?

5 A. I think one of the individuals, yes, that was there --

6 Q. Okay.

7 THE COURT: Okay.

8 A. -- it's not accurate.

9 MR. KOBRE: Thank you.

10 THE COURT: Sure. All right, Miss McEvoy, redirect.

11 MS. McEVOY: Your Honor, may I have a brief sidebar?

12 THE COURT: Why not.

13 (At the sidebar)

14 MS. McEVOY: Your Honor, at the July 7th and July 10th
15 hearings, the inspector gave some answer that the government
16 did not anticipate which the government believes it was a
17 product of confusion or misunderstanding, but the government
18 would ask for 10 or 15 minutes with the Inspector prior to
19 redirect to confirm that.

20 MR. HOFFMAN: Can we be present? Have you any
21 objections to us being present during that conversation?

22 MS. McEVOY: I mean -- to the extent that it is a
23 product of confusion and misunderstanding, the defense
24 counsel's presence might intimidate the witness, and not clear
25 up whether or not in fact it was confusion. The government

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1 just has to satisfy itself that that's correct, and the
2 government does not expect to prep her during this time period.
3 It's just --

4 THE COURT: Well, but if it's not prep, then what is
5 it?

6 MS. McEVOY: It's to clarify, for our purposes, the
7 fact that it was a misunderstanding as opposed to something
8 else. We need to know that.

9 THE COURT: As opposed to something that she
10 intentionally misstated, is that what you're worried about?

11 MS. McEVOY: I don't -- if you read some of her
12 answers literally, I think the record is not clear right now,
13 and I -- exactly that -- not that she intentionally misstated,
14 but that she didn't mean what the --

15 THE COURT: That's what redirect is for. I mean
16 that's -- I don't understand what you're asking. If you take
17 her in the witness room and you ask her some questions to
18 satisfy yourself whether or not there was confusion or
19 something more nefarious than that, the first thing that's
20 going to be asked on recross is what it is that she was asked
21 back in the witness room.

22 McEVOY: And in fact, your Honor, I plan to elicit
23 from her what I ask her.

24 THE COURT: So what's the problem with having counsel
25 there to begin with?

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1 McEVOY: Just for the -- it's to the extent she's
2 confused and not understanding, and I think counsel's presence
3 is not going to --

4 THE COURT: But if they're not going to say
5 anything -- I mean, it's not like they're mean people. I don't
6 really understand what the problem is. If they're just
7 standing there and they're not asking her questions, what is it
8 that you're worried about? She doesn't strike me as the kind
9 of person that who gets intimidated by the mere presence of
10 other adults.

11 MS. McEVOY: I would disagree, your Honor. Based on
12 the --

13 THE COURT: A United States Postal Inspector is afraid
14 of what?

15 MS. McEVOY: I'm not --

16 THE COURT: Come on.

17 MR. HOFFMAN: I was just going to say, I have no
18 objection if Colton is not there.

19 MR. KOBRE: Nor do I.

20 THE COURT: I am glad that's on the record. Go ahead.
21 Go ahead. It's an unusual request. You'll have to
22 admit it's an unusual request. You're seeking to prep a
23 witness in the middle of her testimony.

24 MS. McEVOY: No, your Honor. In fact, I've been given
25 the opportunity many times to -- not to prep a witness, to ask

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C. Fraterrigo - cross

1 a few clarifying questions before redirect. It's -- cross is
2 finished. We haven't been allowed to, you know, to prep the
3 witness.

4 THE COURT: It's not as if she's on cross. I mean, I
5 don't think there's any bar like there is when she's on cross.
6 To the extent that Miss McEvoy is going to elicit what it is
7 that she asked her in the back, you're going to -- in the
8 witness room --

9 MS. McEVOY: Yes, yes, very briefly.

10 THE COURT: So what's the problem, gentlemen?

11 MR. HOFFMAN: It just seems, frankly, somewhat
12 unseemly, and it's going to open up on recross, you know, the
13 question of what were you told, et cetera, et cetera. I think
14 it's --

15 THE COURT: But that's true of any prep. I mean, if
16 they took her in the witness room right before they started
17 direct, no doubt you would ask her what she was asked.

18 MR. HOFFMAN: That's true. I'm just trying to do a
19 process that doesn't require that. I mean, if she simply is
20 going to say, were you asked this, did you answer that and did
21 you understand the question, and is that your proper answer,
22 what's the difference if we're sitting there? I mean then we
23 don't have to be concerned then she was nudged or told or
24 might -- you know, it's just --

25 THE COURT: But that's true of any witness.

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1 MR. HOFFMAN: I understand.

2 THE COURT: I mean, I do think with all the lawyers in
3 this case, as I do in all cases, I personally, lawyers will
4 follow their ethical obligations and there is no reason
5 whatsoever to doubt that here. I think it might --

6 MS. McEVOY: That's exactly why I come to ask for
7 this.

8 THE COURT: I think it might be more efficient, in
9 fact, to do it this way. And to the extent that you all are
10 going to get a chance to -- I'll give you leeway on recross --

11 MR. HOFFMAN: Okay.

12 THE COURT: -- as to what was done in the witness
13 room. I don't have a problem with that. And, Miss McEvoy, I'm
14 going to trust you to give us a full recitation of what went on
15 back there when you are examining the witness on redirect.
16 Okay.

17 MS. McEVOY: Yes, your Honor. And prior to actually
18 asking the witness any questions in the room, I will let her
19 know that I will be asking her what we talked about.

20 THE COURT: Okay.

21 MR. KOBRE: The only thing I would say is that I think
22 it's one thing if your Honor's going to grant the government to
23 take five or ten minutes to meet, and I'm not sure there is a
24 prohibition if the witness is still on cross-examination. The
25 only -- I guess the only part of the objection I would have to

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1 it is if in any way -- the reason is because is the government
2 believes this witness was mistaken and not like was confused
3 and not mistaken. I don't think that should form a basis of
4 what the government should be allowed to speak to the witness
5 or not.

6 THE COURT: If the government is concerned about the
7 veracity of its witness, I'm not talking about this case, but
8 in general, they have ethical obligations to address that,
9 sooner rather than later. If, because of the way this has been
10 broken up, they haven't had a chance to address this with her
11 until now. And, look, I'm going to let them do it. They're
12 telling me it's going to take 10 or 15 minutes. I'm going to
13 give leeway on cross.

14 MR. KOBRE: Okay.

15 THE COURT: I made it clear to Miss McEvoy what my
16 expectations is.

17 MR. KOBRE: Right.

18 THE COURT: So I don't have a problem with it, all
19 right. So let's go ahead and take a 15 minute break and go in
20 the back with the witness go ahead, Miss McEvoy.

21 MR. KOBRE: Actually one other thing before we break.
22 Will it be just Miss McEvoy or Mr. Litt as well who might
23 ultimately be having to testify to the interaction between the
24 two of them?

25 THE COURT: I would expect you would have somebody
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1 (In open court)

2 THE COURT: Ms. McEvoy, are you prepared to go ahead?

3 MS. McEVOY: Yes, your Honor. May I proceed?

4 THE COURT: You may.

5 BY MS. McEVOY:

6 Q. Inspector Fraterrigo, after cross-examination but prior to
7 your testimony now on redirect, did we spend some time together
8 in the jury room?

9 A. Yes.

10 Q. Approximately how long did we spend together?

11 A. About 10 minutes.

12 Q. Were two other AUSAs present?

13 A. Yes.

14 Q. To the best of your recollection can you recount for the
15 Court what I said to you and what you said to me?

16 A. You pointed out a question that the Court asked me on one
17 of the days I testified regarding clients, if there was
18 probable cause with the client list. I indicated to you that
19 my answer was incorrect.

20 There were also questions --

21 Q. Before we get to the other questions, can you turn to the
22 transcript before you, July 10 transcript, page 94.

23 A. Yes.

24 Q. Lines 4 through 8 where the Court asked the question: Is
25 it a fact that you knew you didn't have probable cause to get

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Fraterrigo - redirect

1 compound question. Let's start with the first point. What is
2 it that you Ms. McEvoy asked you back in the jury room about
3 your answer to my question on July 10?

4 THE WITNESS: You asked me to read the question. I
5 read the question and I said to you that at the time I got the
6 warrant I knew I had probable cause for every client list. And
7 you asked me if there was a confusion with the question at the
8 time and I said yes. And I explained to you that during my
9 cross with Hoffman I had tried to explain to myself and in a
10 brief moment in one of his questions about the client list. I
11 explained about the clients that he was specifically pointing
12 out to me. I said at the time I knew I had probable cause and
13 I said this statement here what I answered the Court was
14 incorrect.

15 BY MS. McEVOY:

16 Q. What did you tell me in the robing room about how it was
17 incorrect?

18 A. That I -- that in the affidavit I knew I stated that there
19 was probable cause to believe that to take client lists, other
20 than the clients that were mentioned, because these two
21 individuals were investment advisors, they had clients that
22 were investors, and that I had probable cause on particular
23 clients and I had information on particular clients and I had
24 reason to believe that other investors and other clients were
25 being defrauded.

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Fraterrigo - redirect

1 jury room?

2 A. I recall discussing that the -- one of these days of
3 this -- of the -- one of the two days that I testified that I
4 remembered being frustrated that I wanted to state this to the
5 Court and I had come back in one instance and tried to clarify
6 my statement and tried to clarify what I meant that I was being
7 specifically asked particular investments about particular
8 clients and they are not typed in the affidavit. However, it
9 is mentioned as -- as a -- there was reason to believe and
10 there was probable cause to believe that these two individuals
11 could be defrauding other investors and other clients, and that
12 is what I explained to you in the jury room.

13 Q. In the jury room did anyone from the government tell you
14 what to say either on redirect or examination or on recross?

15 A. No.

16 Q. Is there anything else you recall from the robing room
17 before we get onto another topic?

18 A. No.

19 Q. Let's start with you mentioned just now trying to clarify
20 at one point during your previous testimony what you meant.

21 A. Yes.

22 Q. Can you turn to the transcript before you, July 10, pages
23 97 and 98. On 97 it starts with line 16 and page 98 I think it
24 ends with line 17. If you could take a moment and read that to
25 yourself?

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6886TAN3 Fraterrigo - redirect

1 THE COURT: I think in the context it is appropriate
2 to lay some quick background. Go ahead.

3 THE WITNESS: Can you repeat the question?

4 BY MS. McEVOY:

5 Q. What documents did your search warrant application to the
6 magistrate judge include?

7 A. It included the complaints on Vilar and Gary Tanaka.

8 Q. What, if anything, else did your application to the first
9 search warrant include?

10 A. It also included an attachment of items to be seized, facts
11 of my investigation and probable cause.

12 Q. When you say "facts of your investigation," what is the
13 name of the document that includes the facts of your
14 investigation?

15 A. The affidavit.

16 Q. Did you include in this affidavit all the information you
17 had learned up until this point through the course of your
18 investigation?

19 A. No.

20 Q. At the time you applied for the search warrant, did you
21 believe that probable cause existed to search for the items
22 described in your search warn?

23 A. Yes.

24 Q. When you seized items during the search, did you believe
25 probable cause existed to seize those items?

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Fraterrigo - redirect

1 A. Yes.

2 MR. HOFFMAN: I am going to object to this line of
3 inquiry or just note I think the government now is opening the
4 door to what is in this witness's mind. They are asking
5 questions about whether or not she included certain facts in
6 the affidavit that she knows. To allow these answers to stand,
7 we have to be able to cross-examine this witness.

8 THE COURT: Inspector, when you say you had probable
9 cause to seize the items you did, are you saying what is in the
10 affidavit and supporting complaints or based on information
11 that was not included in the complaints and affidavit?

12 THE WITNESS: Based on what is included in the
13 complaints and affidavit.

14 THE COURT: That is the whole issue about the 11th
15 Circuit and I think the 5th Circuit that allows, to the
16 government's advantage and law enforcement officer to say,
17 well, the affidavit was Hooey, but I know all this other stuff,
18 I told you my view on that line of authority. If there was
19 other stuff that was in her head and it wasn't in the
20 affidavit, in my mind it does not support the warrant and what
21 was taken. It comes down to four corners of the affidavit and
22 supporting documents. That is why I wanted to clarify that
23 question.

24 Go ahead, Ms. McEvoy.

25 MS. McEVROY: The government is not asking for the
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6886TAN3 Fraterrigo - redirect

1 inspector's belief, just what she supported to the magistrate
2 judge.

3 THE COURT: Right.

4 BY MS. McEVOY:

5 Q. When you were asked by the Court on cross-examination when
6 you knew you didn't have probable cause of every client list at
7 the time you got the warrant, were you saying you tried to
8 mislead the magistrate judge about that?

9 A. No, I was not.

10 Q. Were you saying that you lied to the magistrate judge about
11 whether you believed you had probable cause to get the items
12 you asked for in the search warrant?

13 MR. KOBRE: Objection. She is leading.

14 THE COURT: I don't think she is leading, no. She is
15 asking whether she misled the magistrate.

16 MR. KOBRE: She is saying --

17 THE COURT: It is not leading.

18 BY MS. McEVOY:

19 Q. Do you need me to repeat the question?

20 A. Yes.

21 Q. Sticking with the same question asked by the Court on
22 cross-examination. When the Court asked you is it a fact that
23 you knew you didn't have possible cause to get every client
24 list at the time you went and got the warrant, were you saying
25 that you lied to the magistrate judge about whether you

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6886TAN3

Fraterrigo - redirect

1 believed you had probable cause to get the items you requested
2 to be seized?

3 A. No. I was not lying to the judge. I did not lie to the
4 judge.

5 Q. Let's turn and talk about now about the probable cause that
6 you submitted in your application to the magistrate judge. If
7 you could turn to the Government Exhibit 33 before you which is
8 your affidavit in support of the application for a search
9 warrant.

10 A. Yes.

11 Q. You testified before that you included facts in that
12 affidavit?

13 A. Yes.

14 Q. You just described for us what parts of the affidavit
15 include facts?

16 MS. HOFFMAN: I am going to object to this, your
17 Honor. The affidavit speaks for itself. Her characterization
18 is meaningless. It has been put in evidence and pretty much
19 read through on direct as well as somewhat on cross.

20 THE COURT: I am not sure what you mean by facts as
21 opposed to what?

22 MS. McEVOY: Conclusions. I am trying to get the
23 inspector's understanding when she says she put facts in, what
24 she means by facts.

25 THE COURT: Well, I am not sure by the distinction

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6886TAN3 Fraterrigo - redirect

1 investments that she doesn't have specific knowledge about. I
2 take it that is your point, right?

3 MS. McEVOY: Yes.

4 THE COURT: So then make the point. Do it more
5 efficiently. I don't know why we need to break this down. I
6 do think Mr. Hoffman the door is open to do some of this.
7 There is no need for it to be done in this way. Why don't you
8 try to be more efficient about it.

9 MS. McEVOY: Okay. I am trying.

10 BY MS. McEVOY:

11 Q. Based on your experience, Inspector Fraterrigo, in
12 determining whether there is a false statement in investment
13 brochure, does it matter which client it was sent to?

14 A. I don't understand the question.

15 Q. For example, if you find a false statement in an investment
16 brochure, does it matter whether the client was an institution
17 or an individual?

18 A. No.

19 Q. If you could look at paragraph 6(b) of your search warrant
20 affidavit, your third sentence. Do you see where you say,
21 "Although her account statements which she received up to
22 2002 -- this is Ms. Kates?

23 THE COURT: Slow down.

24 A. Yes.

25 Q. "Reflected a growth in the Roads Investment. The

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688ztan4 Fraterrigo - redirect

1 A. I interpreted it as information about the filing for the
2 business name of entities, like I'm trying to explain,
3 corporate records I determine as documents relating to the
4 structure of the entities.

5 Q. Could you give us an example?

6 A. Like a, like a, like a filing, a business certificate of
7 the entity, description of who owns the entity. I, where
8 interpreted as anything relating to the like minutes, things
9 like that, board minutes, board description of the structure of
10 the entities.

11 Q. At the time you executed the search warrant, what, if any,
12 distinction did you make between the term corporate records as
13 included in paragraph one of that rider, and business records
14 in general?

15 A. I didn't make any distinction.

16 Q. So was it your view that you could seize any document, any
17 Amerindo business document under paragraph one of that rider?

18 A. No, no. I mean I -- I saw it as limiting to those what's
19 followed through in the paragraph.

20 Q. When you say what's followed through in the paragraph,
21 you're going to have to explain.

22 A. Within that paragraph what is described as including like
23 shareholders, principals, officers, directors, employees and
24 such, like that.

25 Q. Did you view paragraph -- whether you executed that

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688ztan4 Fraterrigo - redirect

1 Q. What about every, did you believe you had probable cause to
2 seize every Amerindo business document?

3 A. No.

4 THE COURT: I want to understand exactly how it is
5 that you think paragraphs below paragraph one limited paragraph
6 one. That's what you're saying, right?

7 THE WITNESS: Yes.

8 THE COURT: Did you say it's a pyramid; it's almost an
9 inverted pyramid, so the most generic description begins in
10 paragraph one and the paragraphs that follow that narrow the
11 scope of the search warrant?

12 THE WITNESS: That's the way.

13 THE COURT: So that each paragraph would narrow what
14 precedes it?

15 THE WITNESS: That's my impression.

16 THE COURT: So then by that logic, the only thing you
17 could look at is the last paragraph in the rider because that's
18 the -- what defines the scope of the search.

19 THE WITNESS: No, it's there -- paragraph one is, to
20 me, is a general paragraph that indicates, you know, particular
21 entities of Amerindo, and then it states shareholders,
22 principals, officers, and such. The other documents provide
23 specifics for paragraph one.

24 Q. I think that's what we're trying to understand, Inspector
25 Fraterrigo?

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688ztan4

Fraterrigo - redirect

1 A. Yes. It's -- maybe it's not an inverted pyramid, but it's
2 just each paragraph provides specifics for corporate records.
3 Instead of the paragraph number one alone, corporate records
4 can mean any business records in Amerindo; whereas, the other
5 paragraphs provide -- narrows it down, I mean.

6 Q. I guess what is -- what you can you explain for us on the
7 one hand you just testified that you didn't interpret paragraph
8 one to mean every Amerindo business record that you --

9 MR. HOFFMAN: Object, your Honor, to -- that's a
10 misstatement of or mischaracterization.

11 THE COURT: Inspector, do you think -- you think you
12 were entitled to take every single Amerindo business or
13 corporate record under this search warrant?

14 THE WITNESS: No.

15 THE COURT: All right. And what was it that you think
16 limited the scope of which corporate or business records of
17 Amerindo you were allowed to take?

18 THE WITNESS: The other paragraphs in the attachment.

19 THE COURT: Okay. When you say any other paragraphs,
20 what is -- what exactly does that mean here? Let me -- do you
21 have the rider there with you?

22 THE WITNESS: Yes. This is -- these are the
23 paragraphs from two to 17 limited, limited number one.

24 THE COURT: Okay. Can I just borrow that for a
25 second. Was paragraph two limited by paragraph three?

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1 THE WITNESS: No. Paragraph one was limited by the
2 others. That's the way I took it. It's the way I took it.

3 THE COURT: So by that logic, would you even need to
4 read paragraph one? You could just get rid of it and then you
5 would be allowed to seize everything in paragraphs two through
6 17. What purpose does paragraph one serve, then, in your view?

7 THE WITNESS: It provides a general sense, a general
8 information of what particular documents.

9 BY MS. McEVOY:

10 Q. Are there any -- when it says corporate records in
11 paragraph one, are there any types of corporate records listed
12 there that you believe paragraph one, standing alone, gave you
13 authority to seize as opposed to any of the other paragraphs in
14 the warrant --

15 A. Yes.

16 Q. -- rider? What types of corporate records did you view
17 paragraph one giving you authority to seize without having to
18 look at the rest of the rider?

19 A. Shareholder information, bylaws, resolutions, what's listed
20 there.

21 THE COURT: What's listed in paragraph one?

22 THE WITNESS: Yes.

23 THE COURT: So -- I'm sorry. Could I borrow this
24 again? So, according to paragraph one, you can seize any and
25 all client files and marketing materials for any of the

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1 Amerindo entities; is that right?

2 THE WITNESS: Yes.

3 THE COURT: So then, in other words, what's in
4 paragraph one stands alone and authorizes you to take any and
5 all marketing materials for any of the Amerindo entities?

6 THE WITNESS: Yes.

7 BY MS. McEVOY:

8 Q. When you executed the search warrant, did you view
9 paragraph one standing alone?

10 A. No. I made determinations when I was searching the office,
11 I made particular determinations whether it was covered under
12 the warrant, and then later determined if it was useful to the
13 investigation, and I seized what.

14 Q. Right. But you said you made a determination based on what
15 did you --

16 A. Based on this attachment, based on my understanding of the
17 attachment.

18 Q. And my question to you is, Inspector Fraterrigo, did you
19 make that determination based on a particular paragraph?

20 A. Yes.

21 Q. Can you just explain for us the process you followed when
22 determining which items to seize?

23 A. I, as I went through documents, I made a determination
24 whether it was covered under the warrant, and if it was covered
25 under the warrant, I made a determination there whether it was

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1 useful to the investigation, and if it was I seized it.

2 Q. Under the Judge's question which he just asked you, client
3 files, if, as you just testified, all Amerindo client files
4 could be seized under paragraph one, what was the process you
5 followed to determine whether or not you were going to seize
6 the client files?

7 MR. HOFFMAN: I'm going to object to that. She asked
8 the question before what process did you use. She answered it
9 very specifically.

10 MS. McEVOY: I'm asking a specific example here.

11 THE COURT: I'll allow the question.

12 Q. If you came across a -- if, as you just testified, you were
13 authorized to seize any client file under paragraph one of the
14 rider?

15 A. Uh-huh.

16 Q. Did you, in fact, just seize all client files under
17 paragraph one of the rider?

18 A. Um, I seized client files that were relating to -- I don't
19 know if I actually seized that particular client files. I
20 mean, it would be covered under paragraph one.

21 THE COURT: Can I have this? All right. When it says
22 that property that can be seized, paragraph one, court records
23 concerning Amerindo investment advisors, and then it lists the
24 other entities, including but not limited to marketing
25 materials, copies of correspondence sent to or received from

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1 client -- let's just take those two categories, marketing
2 materials and copies of correspondence sent to or received from
3 clients. What, if any, limitation in that paragraph would
4 there be in your ability to seize any and all correspondence
5 sent to and received from clients or any and all marketing
6 materials?

7 THE WITNESS: There would be no limitation.

8 Q. Is that how you executed the warrant in practice?

9 A. No.

10 Q. How did you execute the warrant?

11 A. I made determinations there. I reviewed the material to --
12 that I was intending to -- that was covered under the warrant,
13 and I made a determination there whether it would be useful to
14 the investigation and, if not, I took it and if not, I left it.

15 Q. And during your briefing to the postal inspectors, did you
16 instruct them to seize every document that related to the
17 businesses of Amerindo U.S. and Panama and Cayman?

18 MR. KOBRE: Objection, leading.

19 THE COURT: No, overruled. It's not leading.

20 A. No, I did not.

21 Q. And executing the search warrant, did you seize all
22 business documents relating to Amerindo, U.S, u.K., Cayman and
23 Panama?

24 A. No.

25 THE COURT: In your briefing to the Inspectors, did
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1 talking about, Inspector?

2 THE WITNESS: Yes, yes.

3 THE COURT: Okay. And you inferred from that that the
4 others had similar information in them?

5 THE WITNESS: Yes.

6 THE COURT: All right.

7 Q. Do you recall being asked a question on cross-examination
8 about a series of questions, actually, about the letter Miss
9 Wolf sent to the government dated May 26, 2005, requesting
10 access to certain boxes of the search documents?

11 A. Yes.

12 Q. I believe it was defense exhibit VV.

13 Prior to receiving that letter, approximately, how
14 much time did your other postal inspectors spend with defense
15 counsel providing them access to those search materials?

16 A. Provided them plenty of time to go through those materials.

17 Q. Can you give us an estimate of how many hours, prior to
18 receiving that letter, May 26, 2006, actually?

19 THE COURT: How about this, Inspector; was it more
20 than five hours?

21 THE WITNESS: Yes.

22 THE COURT: Was it more than ten hours?

23 THE WITNESS: Yes.

24 THE COURT: Was it more than 20 hours?

25 THE WITNESS: Yes. I'm just -- there was several

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1 days.

2 THE COURT: All right. Go ahead, Ms. McEvoy.

3 Q. After receiving that letter from Miss Wolf, what steps, if
4 any, did you take to identify the items listed in Miss Wolf's
5 letter?

6 A. I went to the evidence room and pulled all the items that
7 she wanted.

8 Q. And how many boxes do you recall Miss Wolf requested?

9 A. It was 12 boxes.

10 Q. And did you review the boxes?

11 A. Yes.

12 Q. For what purpose?

13 A. For purpose of going through it to see what was in it and
14 determining what could be of interest in these boxes.

15 Q. Were there instances in which you reviewed the boxes, but
16 could not identify the specific items listed in Miss Wolf's
17 letter?

18 A. Yes.

19 Q. Approximately, how many types?

20 A. There was one particular item.

21 Q. One particular?

22 A. There was one particular envelope or box that she named in
23 the letter that I could not find.

24 Q. What did you do in those instances?

25 A. I tried -- I went through the rest of the boxes and I

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1 believe I located the possible document.

2 Q. Did there come a time when you had a conversation with
3 Ms. Wolf about which items she specifically wanted you to bring
4 to the hearing?

5 A. Yes.

6 Q. Approximately, how many conversations did you have with
7 Miss Wolf about the items listed in her letter?

8 A. I believe it was may have been one, one conversation, maybe
9 two. I can't recall.

10 Q. And between the date of that letter, May 26, 2006 and
11 today, did there also come a time when defense counsel
12 requested access to the search materials?

13 A. Yes.

14 Q. Did you accommodate those requests?

15 A. Yes.

16 Q. How?

17 A. I scheduled time to -- for myself to sit with them as they
18 reviewed the boxes, and I also arranged other postal inspectors
19 to sit with them as they viewed the boxes.

20 Q. And approximately, on approximately how many occasions did
21 you or other postal inspectors provide access to defense
22 counsel so they could review the boxes in preparation for the
23 hearing?

24 MR. KOBRE: Your Honor, to short circuit this, I don't
25 think defense is at all claiming they didn't have access to

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1 these boxes.

2 The issue is after being identified, defense counsel
3 wanted to use them at the hearing, they were -- the items were
4 removed and sent back to the company. The government can go
5 through this line, take the time, but we don't contest access.

6 THE COURT: I assumed that all along, yes. I
7 didn't -- I agree, and anyway, I think you made the point.

8 MS. McEVOY: I'll just ask the question.

9 THE COURT: Go head, ask the question.

10 Q. When you were asked on cross-examination by Mr. Kobre
11 whether you were trying to impede the defense from preparing
12 for cross-examination, were you trying to impede them --

13 A. No, I was not.

14 Q. -- to prepare for cross-examination?

15 With respect to the items you returned to Amerindo,
16 what was your purpose in returning those items?

17 A. The purpose was that decision was made that it was not
18 covered under the warrant and it should have not been seized,
19 and it was returned.

20 Q. And what was the nature of those items?

21 A. There were personal letters from Alberto Vilar to a woman,
22 other personal letters of Alberta Vilar. I believe there was a
23 CD with Spanish language. I can't recall the others.

24 Q. Were they business records?

25 A. No.

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